

This order is SIGNED.

Dated: February 1, 2018


JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted by:

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Proposed attorneys for debtor-in-possession
MOUNTAIN CRANE SERVICE LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: MOUNTAIN CRANE SERVICE LLC, Debtor.	Bankruptcy No. No. 18-20225 Chapter 11 Honorable Joel T. Marker
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FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL

This matter came before the Court on February 1, 2018 at 10:00 a.m. for final hearing on the motion for authority to use cash collateral (the “**Motion**”) filed by debtor and debtor-in-possession MOUNTAIN CRANE SERVICE LLC (the “**Debtor**”). Appearances of counsel and of other parties-in-interest were made on the record at the hearing.

Based on the evidence received by the Court and/or adduced at the preliminary and final hearings on the Motion, considering the representations and statements of counsel, and the Court

having made findings of fact and conclusions of law on the record of the hearing, which findings and conclusions are incorporated into this Order by reference, the Court hereby

FINDS AND CONCLUDES as follows:

- A. the Court has jurisdiction under 28 U.S.C. §§ 157 and 1334;
- B. this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O);
- C. no examiner or trustee has been appointed in this case;
- D. an Official Committee of Unsecured Creditors (the “**Creditor’s Committee**”) has been appointed;
- E. notice of the Motion, and of both the preliminary and final hearings thereon, was and is, given the circumstances, adequate and proper within the meaning of 11 U.S.C. § 102(1) and Federal Rule of Bankruptcy Procedure 4001(b);
- F. the expenses identified on the budget attached hereto as **Exhibit “A”** are actual and necessary costs and expenses of preserving the Debtor’s chapter 11 bankruptcy estate;
- G. Bank of Ann Arbor and other creditors (collectively, “**Affected Creditors**”) may claim an interest in the Debtor’s cash collateral;
- H. to the extent that Bank of Ann Arbor and any other Affected Creditors have an interest in the Debtor’s cash and/or other assets of the Debtor which will result in cash proceeds (collectively, the “**Cash Collateral**”), then the Affected Creditors are adequately protected by the replacement liens and other adequate protection rights granted hereunder; and
- I. the Court stated additional findings of fact and conclusions of law on the record during the hearings on the Motion, which findings and conclusions are incorporated herein by reference.

WHEREFORE, based upon the Motion, the foregoing findings and conclusions and other matters of record, and good cause appearing, it hereby is

ORDERED that:

1. The Motion is GRANTED, as more particularly described below.
2. The Debtor is authorized to use and spend Cash Collateral to pay expenses as consistent with and identified on the budget attached hereto as **Exhibit “A”** (the “**Budget**”) to the extent of the amounts reflected on the Budget, through the period ending April 30, 2018. The Debtor may exceed the amounts budgeted for individual line items on the Budget by up to ten percent (10%). Further, savings in prior periods may be carried forward to permit greater expenditures in later periods.
3. The authority to use cash collateral under this Order may be modified by further order of the Court. In this regard, subject to such notice as is appropriate under the circumstances, the Debtor shall have the right to request authority to pay expenses not contemplated under the current Budget.
4. On February 27, 2018, at 10:00 a.m., the Court shall hold a continued hearing to consider the Debtor’s authority to use cash collateral (the “**Continued Hearing**”), including (collectively, “**Modified or Supplemental Cash Collateral Authority**”) (a) any request by the Debtor to approve payment of specific expenses or categories of expenses not contemplated under the current Budget (or subsequently approved budgets), (b) requests by the Debtor to authorize use of cash collateral under modified or replacement budgets, and (c) requests by the Debtor to authorize use of cash collateral during periods not reflected in the current Budget (*i.e.*, in the months following April 30, 2018).
5. Entry of this Order, and its dissemination according to ordinary Court noticing procedures, shall constitute adequate and appropriate notice of the Continued Hearing. No

further or additional notice of the Continued Hearing need by filed with the Court or served on parties-in-interest.

6. To the extent the Debtor intends to request Modified or Supplemental Cash Collateral Authority, then no later than seven calendar days prior to the Continued Hearing, the Debtor shall file with the Court a “Notice of Substitute Budget” or a “Notice of Debtor’s Request for Modified or Supplemental Cash Collateral Authority,” which shall specify the specific expenses or categories of expenses not contemplated under the then current budget as to which the Debtor will be seeking cash collateral authority. Such notice should be served, via CM/ECF (or if such persons have not appeared in the case through counsel, by e-mail), upon Bank of Ann Arbor, and upon any other person that files a specific “Request for Notices Relating to Future Hearings Regarding Use of Cash Collateral”. Such Notice, filed by the Debtor or served via e-mail, shall be deemed adequate notice of the relief to be requested by the Debtor at the Continued Hearing. No further or additional notice regarding the Debtor’s request for Modified or Supplemental Cash Collateral Authority need be given.

7. The date and time of the Continued Hearing may be modified (and the Continued Hearing may be stricken and further continued) as directed and permitted by the Court. Notice of such modified or continued hearing shall be adequate and appropriate if reflected in a future Order of the Court, or if filed with the Court and served via CM/ECF (or if such persons have not appeared in the case through counsel, by e-mail) upon Bank of Ann Arbor and upon any other person that files a specific “Request for Notices Relating to Future Hearings Regarding Use of Cash Collateral”.

8. Further, to the extent the Debtor obtains the express written consent of Bank of Ann Arbor or other Affected Creditors, the Debtor may use and spend Cash Collateral beyond or in addition to the amounts reflected in the Budget to pay any additional costs or expenses that arise in the ordinary course of the Debtor’s business.

9. The Affected Creditors shall receive, and shall be afforded, the following rights and treatment as “adequate protection” for the Debtor’s use of cash collateral (collectively, the “**Adequate Protection Rights**”):

a. To the extent the Debtor uses cash that constitutes “cash collateral” of an Affected Creditor within the meaning of 11 U.S.C. § 363, and then to the extent such use of cash results in a diminution, in the aggregate, in the amount of the collateral of the Affected Creditor as the same existed on the date that use of cash collateral was authorized, as adequate protection for the Debtor’s use of the same, each of the Affected Creditors hereby is granted a properly perfected security interest and replacement lien (the “**Replacement Lien**”) in all pre-petition and post-petition assets of the Debtor (excepting chapter 5 claims) solely to the extent of such diminution, and solely to the extent and nature, and with the same priority, that such Affected Creditor held a valid, enforceable and properly perfected lien as of the commencement of this case.

b. The Replacement Lien granted hereunder shall attach and become valid, binding, continuing, enforceable, fully-perfected and non-avoidable by operation of law as of the Petition Date without any further action by the Debtor, the Affected Creditors, or any other person, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, mortgages, deeds of trust, or other documents.

10. This Court has not been asked to find, and therefore nothing in this Order shall be deemed a determination of the allowance, status, amount, validity, extent, perfection or priority any pre-petition claims or liens, including the alleged claims of liens of Bank of Ann Arbor or any other potential Affected Creditor. All rights are reserved in the Debtor, the Creditor’s Committee and other parties-in-interest (a) to object to the allowance, status, amount, validity,

extent, perfection or priority of alleged/ostensible pre-petition claims or liens, and (b) to exercise such other rights as are available under the Bankruptcy Code.

11. Notwithstanding anything to the contrary herein, nothing herein shall be deemed to grant extraordinary relief under Local Rule 4001-2, including without limitation the relief specifically listed in subsections (a)(1)(A) through (a)(1)(G) of Local Rule 4001-2.

12. Notwithstanding anything to the contrary in this order:

a. The absence of an objection from any secured creditor with a security interest in the Debtor's equipment or collateral, including cash collateral, is not a waiver, modification or release of any rights of such secured creditor;

b. All lien rights and priorities are preserved and nothing in the order grants any adequate protection rights regarding the collateral of any other secured creditor other than a junior lien to the extent, and only to the extent, that there is any equity in such collateral and to the extent and nature of any liens held by the Affected Creditors already in existence; and

c. Nothing in the Budget precludes, limits or waives the right of any secured creditor to demand, and receive, payments in excess of the amounts, if any, specified in the Budget.

13. At least one business day in advance of the Continued Hearing, the Debtor shall submit to the Court, to the United States Trustee, Bank of Ann Arbor and any person that files a specific "Request for Notices Relating to Future Hearings Regarding Use of Cash Collateral," a report of actual receipts and disbursements versus the amounts reflected in the then current Budget.

14. The Debtor voluntarily has agreed that it will permit the court-approved financial advisor to the Creditor's Committee to inspect the Debtor's books, records and accounting system upon reasonable advance written notice. If the Debtor refuses or fails to do so, or

withdraws its agreement, then the Creditor's Committee shall have the right to withdraw its consent to the Debtor's use of cash collateral and/or it may object to the Debtor's use of cash collateral.

15. This order is effective as of February 1, 2018, when the Court's oral ruling was announced in open court at the conclusion of the hearing on the Motion.

----- END OF ORDER -----

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing Order shall be served to the parties and in the manner designated below:

By Electronic Service: I certify that the parties of the record in this case as identified below, are registered CM/ECF users and will be served notice of entry of the foregoing Order through the CM/ECF system:

- Brett N. Anderson bretta@blackburn-stoll.com
- Darwin H. Bingham dbingham@scalleyreading.net, cat@scalleyreading.net
- Matthew M. Boley mboley@cohnekinghorn.com, jhasty@cohnekinghorn.com
- Mona Lyman Burton mburton@hollandhart.com, intaketeam@hollandhart.com;slclitdocket@hollandhart.com;lcpaul@hollandhart.com
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- Jeffrey L. Trousdale jtrousdale@cohnekinghorn.com, nlakey@cohnekinghorn.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

By U.S. Mail: In addition to the parties of record receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b):

Mountain Crane Service LLC
393 S Monterey St
Salt Lake City, UT 84104

Douglas C. Bernstein
PLUNKETT COONEY, P.C.
Counsel for Bank of Ann Arbor
38505 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304

/s/ Matthew M. Boley

EXHIBIT A

Mountain Crane Services, LLC
January 12, 2018 through April 30, 2018
Cash Collateral Forecast

Forecast Period:	1 Week Ending: 1/19/2018	2 Week Ending: 1/26/2018	3 Week Ending: 2/2/2018	4 Month Ending: 2/28/2018	5 Month Ending: 3/31/2018	6 Month Ending: 4/30/2018	Total
Period-Ending:							
Estimated Beginning Cash Balance	\$ 1,112,710	\$ 1,264,585	\$ 1,281,120	\$ 1,362,254	\$ 1,418,264	\$ 1,466,147	\$ 1,112,710
Estimated Cash Receipts:							
Collections	800,000	750,000	800,000	2,850,000	3,750,000	4,750,000	13,700,000 [I]
Total Estimated Cash Receipts	800,000	750,000	800,000	2,850,000	3,750,000	4,750,000	13,700,000
Estimated Cash Disbursements:							
Labor	217,500	210,250	232,000	870,000	1,160,000	1,522,500	4,212,250 [A]
Travel	375	363	400	1,500	2,000	2,625	7,263 [A]
Subcontractor	12,150	11,745	12,960	48,600	64,800	85,050	235,305 [A]
Equipment: Bare Rental	58,125	56,188	62,000	232,500	310,000	406,875	1,125,688 [A]
Fuel	21,525	20,808	22,960	86,100	114,800	150,675	416,868 [A]
Materials & Supplies	17,625	17,038	18,800	70,500	94,000	123,375	341,338 [A]
Tools	2,025	1,958	2,160	8,100	10,800	14,175	39,218 [A]
Rigging	5,175	5,003	5,520	20,700	27,600	36,225	100,223 [A]
Transport	63,750	61,625	68,000	255,000	340,000	446,250	1,234,625 [A]
Equipment Repairs and Maintenance	22,275	21,533	23,760	89,100	118,800	155,925	431,393 [A]
Parts	9,675	9,353	10,320	38,700	51,600	67,725	187,373 [A]
Tires	4,800	4,640	5,120	19,200	25,600	33,600	92,960 [A]
Pilot Car Services	375	363	400	1,500	2,000	2,625	7,263 [A]
Tool Rental	1,800	1,740	1,920	7,200	9,600	12,600	34,860 [A]
Other	2,925	2,828	3,120	11,700	15,600	20,475	56,648 [A]
Rent	9,000	5,000		14,000	14,000	14,000	56,000 [B]
Advertising	-	1,000	-	1,000	1,000	1,000	4,000 [B]
Credit Card Processing Fees	750	725	800	3,000	4,000	5,250	14,525 [A]
Dues & Subscriptions	1,125	1,088	1,200	4,500	6,000	7,875	21,788 [A]
Health Care	-	-	-	37,000	37,000	37,000	111,000 [C]
Insurance	-	-	-	100,000	100,000	100,000	300,000 [D]
Internet	1,000	-	-	1,000	1,000	1,000	4,000 [B]
Licenses & Permits	9,375	9,063	10,000	37,500	50,000	65,625	181,563 [A]
Travel & Entertainment	1,875	1,813	2,000	7,500	10,000	13,125	36,313 [A]
Penalties & Fines	563	544	600	2,250	3,000	3,938	10,894 [A]
Postage & Delivery	525	508	560	2,100	2,800	3,675	10,168 [A]
Printing	188	181	200	750	1,000	1,313	3,631 [A]
Repairs & Maintenance - Yard	1,575	1,523	1,680	6,300	8,400	11,025	30,503 [A]
Taxes	2,250	2,175	2,400	9,000	12,000	15,750	43,575 [A]
Telephone	9,000	-	-	9,000	9,000	9,000	36,000 [B]
Utilities	15,000	-	-	15,000	15,000	15,000	60,000 [B]
Training	253	244	269	1,011	1,347	1,768	4,893 [A]
Truck Expense	-	25,000	-	35,000	35,000	35,000	130,000 [B]
Office Supplies	1,219	1,179	1,300	4,877	6,502	8,534	23,612 [A]
Uniform Expense	1,575	1,523	1,680	6,300	8,400	11,025	30,503 [A]
Payroll Expenses OH	115,000	115,000	110,000	410,000	410,000	410,000	1,570,000 [E]
Safety & Compliance	3,975	3,843	4,240	15,900	21,200	27,825	76,983 [A]
Bank & Finance Charges	1,050	1,015	1,120	4,200	5,600	7,350	20,335 [A]
Discount Fees	1,425	1,378	1,520	5,700	7,600	9,975	27,598 [A]
Bad Debt Write Off	375	363	400	1,500	2,000	2,625	7,263 [A]
Miscellaneous	3,750	3,625	4,000	15,000	20,000	26,250	72,625 [A]
Debtor's Counsel	-	-	25,000	25,000	25,000	25,000	100,000 [F]
Accountant to the Debtor	-	-	20,000	10,000	7,500	7,500	45,000 [G]
Creditors Committee	-	-	15,000	15,000	15,000	15,000	60,000 [G]
Debt Service Payments	27,178	131,250	45,456	234,203	515,567	515,567	1,469,221 [H]
Total Estimated Cash Disbursements	648,125	733,465	718,866	2,793,990	3,702,117	4,488,695	13,085,258
Net Cash Flow	151,875	16,535	81,134	56,010	47,883	261,305	614,742
Estimated Ending Cash Balance	\$ 1,264,585	\$ 1,281,120	\$ 1,362,254	\$ 1,418,264	\$ 1,466,147	\$ 1,727,452	\$ 1,727,452

Footnotes:

[A] Calculated as a percentage of estimated Crane Service Revenue, percentages are calculated using last 5 years of financial information

[B] Fixed costs based on historical financial data and adjusted for Mountain Crane's cost reduction efforts

[C] Based on a reduced full time employee count.

[D] Reduced cash requirement due to prepayment of umbrella insurance premiums.

[E] Based on reduced full time employee count. Estimate includes payroll taxes for OH employees.

[F] Provided by outside accounting advisory team.

[G] Provided by outside legal advisory team.

[H] Calculated as interest payments on notes being serviced.

[I] Based on historical collection averages, through February.

[J] Payments in March and April are based on projected debt service payments (principal and interest) going forward